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In re Application of :
Joy :
Application No.: 10/524,246 :
Filing Date: 03 February 2005 : DECISION
Attorney Docket No.: 1075-P0001 :
For: Routine Checker :

This is a decision on applicant's petition under 37 CFR 1.137(b) filed on 03 February 2005.

BACKGROUND

International application number PCT/AU03/00884 was filed on 10 July 2003, claimed an earliest priority date of 10 July 2002, and designated the U.S. The International Bureau transmitted a copy of the published international application to the USPTO on 22 January 2004. The 30 month time period for paying the basic national fee in the United States expired at midnight on 10 January 2005.

On 03 February 2005, applicant filed *inter alia* the instant application, accompanied by the instant petition.

DISCUSSION

The first sentence of the instant application indicates that it "is a continuation-in-part of International Application PCT/AU2003/000884 entitled 'Routine Checker' with an international filing date of July 10th, 2003..." However, co-pendency between the instant application (filed on 03 February 2005) and international application no. PCT/AU03/00884 did not exist, because international application no. PCT/AU03/00884 became abandoned with respect to the national stage in the United States under 35 U.S.C. 371 as of midnight on 10 January 2005 for failure to timely pay the basic national fee. Therefore, it would be appropriate to consider the petition under 37 CFR 1.137(b), filed on 03 February 2005, for purposes of establishing co-pendency.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set

forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Regarding requirement (1), the required reply is the filing of the instant continuation-in-part application. Therefore, requirement (1) has been satisfied.

Regarding requirement (2), the petition included authorization to charge the petition fee to counsel's deposit account, thereby satisfying requirement (2).

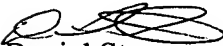
Regarding requirement (3), the petition includes an appropriate statement, in satisfaction of requirement (3).


Regarding requirement (4), no terminal disclaimer is required because the international filing date of this application is later than 8 June 1995.

DECISION

The petition under 37 CFR 1.137(b) is **GRANTED** for purposes of establishing co-pendency. Co-pendency having been established, international application no. PCT/AU03/00884 is again abandoned with respect to the national stage in the United States.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing.


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